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No. 865

In the Supreme Court of the United States

OCTOBER TERM, 1950

JAY G. WILLIAMS, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

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No. 365

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UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the Court of Appeals (R. 344) is reported at 179 F. 2d 656.

JURISDICTION

The judgment of the Court of Appeals was entered on January 10, 1950 (R. 351). The petition for a writ of certiorari was filed on February 4, 1950, and was granted on October 16, 1950 (R. 351). The jurisdiction of this Court rests on 28 U. S. C. 1254 (1). See also Rules 37 (b) (2) and 45 (a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether Section 20 of the Criminal Code—making it an offense for any person, acting under color of law, willfully to deprive another of any federal rights, privileges, or immunities—is violated by a special police officer who in his official capacity arrests a person suspected of crime and subjects him to the "third degree" in order to obtain a confession; and if so, whether the statute, as so applied, is unconstitutional for failure to provide an ascertainable standard of guilt.

2. Whether the evidence supports the jury's finding, implicit in the verdict, that petitioner acted under color of law.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

Section 20 of the Criminal Code, 18 U. S. C. (1946 ed.) 52 (now 18 U. S. C. (1948 rev.) 242), provided in pertinent part during the period involved in this case:

> Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United

States * * * shall be fined not more than $1,000, or imprisoned not more than one year, or both.

The Fourteenth Amendment to the Constitution of the United States provides:

> SEC. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
>
> * * * * *
>
> SEC. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

STATEMENT

On November 15, 1948, petitioner Williams, along with Ford, Bombaci, Perry, Yuhas, and Lindsley Lumber Company, a corporation, was indicted in the United States District Court for the Southern District of Florida, in eight counts, four under Section 20 and four under Section 19

of the Criminal Code[1] (R. 1). Counts Two, Four, Six and Eight charged each of the defendants with violations of Section 20 in that, on or about March 28, 1947, Williams, Bombaci, and Perry, while acting as special police officers by virtue of written authority under the laws of the State of Florida and the ordinances and regulations of the municipality of Miami, and Ford, while acting as a regular police officer under the laws of the State of Florida and the ordinances and regulations of the municipality of Miami, all of whom were aided and abetted by Yuhas and Lindsley Lumber Company, did willfully, under color of the laws, statutes, ordinances, regulations, and customs of the State of Florida and of the municipality of Miami, subject and cause to be subjected four named inhabitants[2] of the State

[1] Section 19 (18 U. S. C. (1946 ed.) 51 (now 18 U. S. C. (1948 rev.) 241), provided:

> If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than $5,000 and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States.

[2] The four even-numbered counts differed only as to the victim named: Purnell (count 2); Robinson (count 4); Priest (count 6); Sturniolo (count 8).

of Florida to the deprivation of the following rights, privileges and immunities secured to each of them and protected by the Fourteenth Amendment to the United States Constitution: not to be deprived of liberty without due process of law; to be secure in his person while in the custody of the State; not to be subjected to punishment without due process of law; to be immune, while in the custody of persons acting under color of the laws of the State, from illegal assault and battery by any person exercising the authority of the State; and to be tried by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the State. It was further charged that the defendants arrested and detained each of the named victims and brought him to a shack on the premises of the Lindsley Lumber Company where they physically beat and tortured him in order illegally to coerce and force him to confess his guilt in connection with alleged thefts of property from the Company and to implicate other persons as participants in the thefts, and for the further purpose of imposing illegal summary punishment upon him (R. 2–4, 5–7, 8–10, 11–13).[3]

[3] The trial court allowed the Government at the close of its case to amend the indictment by substituting for the name "Lindsley Lumber Company," the true name of the corporate defendant, "Dania Supply Company, a corporation, doing business as Lindsley Lumber Company." (R. 170, 177.) In the court below petitioner contended, but unsuccessfully (R. 347–349), that such substitution constituted prejudicial error as to him; he has apparently abandoned the point here.

Counts One, Three, Five, and Seven (R. 1, 4, 7, 10) charged the same defendants with having conspired to injure, oppress, threaten and intimidate the respective victims named in the even-numbered counts in the free exercise and enjoyment of rights and privileges guaranteed to them under the Fourteenth Amendment, in violation of Section 19. The alleged object of the conspiracy in each instance was the commission of the substantive offense charged in the corresponding even-numbered count.

Petitioner was found guilty on the four substantive counts (R. 15), and was sentenced to one year's imprisonment on each, the terms to run consecutively (R. 17–18). On appeal to the Court of Appeals for the Fifth Circuit, the judgment of conviction was affirmed (R. 344, 351).

The other defendants were acquitted on the substantive counts (R. 15), and the jury was unable to agree on the conspiracy counts (R. 16). Subsequently, all the defendants were again indicted and tried on conspiracy charges under Section 19, and were convicted. The validity of these convictions is now pending before this Court, No. 26. A third case, No. 134, involving an indictment for perjury allegedly committed at the trial in the instant case, is also pending.

The evidence adduced in support of the allegations in the indictment may be summarized as follows: Dania Supply Company, a Florida corporation doing business and known as Lindsley Lumber Company, believing that employees were stealing company property, engaged the Continental Detective Bureau to ascertain who was responsible for the thefts (R. 212, 226). Petitioner was the "Chief" of the Continental Detective Bureau (R. 209, 211–212), and the holder of a special police officer's card issued by the Director of Public Safety of the City of Miami (R. 145–147, 150–151, 152, 212), having taken an oath and duly qualified as a special police officer (R. 151). Perry and Bombaci were employees of the detective agency (R. 240–241, 199, 200), and Ford was a regular police officer of the City of Miami (R. 188). The defendants, together with Yuhas and one Giroux, were assigned to assist in the investigation under petitioner's supervision (R. 120–122, 212, 213, 220, 226, 227, 230–231, 241).

The investigation centered upon the persons named in the indictment as the victims of the beatings: Purnell, Robinson, Priest, and Sturniolo. Over a period of three days, each was taken into a paint shack on the company's premises and extensively questioned about the thefts.

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Following disclaimer of guilt by each of the victims, he was subjected to prolonged interrogation, accompanied by physical violence.[4] The typical equipment of the "third degree" was used: a bright light focussed on the victim's eyes (R. 28, 79, 88, 122, 124–125), a rubber hose (R. 79), a pistol (R. 32, 83, 135, 295), and other weapons and implements (R. 32, 58, 104, 108, 123–125). Each victim was beaten and oppressed until he "confessed" (R. 31; 57–58; 82; 102–103).

In these events petitioner did most of the questioning (R. 30, 31, 125; 55; 78, 82, 94; 102) and for the most part administered the beatings (R. 32; 102, 108, 123, 128; 283). It was petitioner who, after knocking Purnell out of his chair (R. 29), repeatedly struck him in the stomach. Later, while Purnell was trying to recover from a paralyzing blow which one of the others had landed with a blunt instrument, petitioner knocked him out of his chair again (R. 31). Petitioner forced Priest to look directly into a 150-watt light for fifteen minutes, after which, he testified, "I couldn't see nothing. I was blind" (R. 79), whereupon petitioner struck him six or eight times with a rubber hose. Fol-

[4] As to Purnell: R. 29, 30–31, 32, 36–37, 45–46, 47–48, 49, 55, 85–87, 104, 125, 134; as to Robinson: 34, 56, 57, 58, 59, 60, 62, 68–69, 70–71, 72–73, 75, 76, 118, 125–126, 134, 259; as to Priest: R. 69, 74, 79, 80, 82, 83, 94, 97–98, 100, 101, 124–125, 129, 134, 283–284; and as to Sturniolo: 54, 58–59, 102–103, 119, 123, 134, 260, 294–295.

lowing an interlude during which another defendant administered blows with a sash cord, petitioner knocked Priest to the floor with a blow to the head, having remarked that the victim (aged 51, R. 77) was a "pretty tough old son-of-a-bitch." (R. 79.) Petitioner also threatened Priest with an automatic pistol, but the latter had at that point been beaten so severely that he was indifferent to this threat: "You can take me out in the Everglades and kill me, because you have beat me so bad, it wouldn't hurt me." (R. 83.) Another witness, Giroux, testified that the times petitioner struck Priest were "too numerous to mention." (R. 124.) Sturniolo testified that when he was brought into the shack, "Williams did the beating as far as I could see." (R. 102.) And it was petitioner who, following the beatings administered to Robinson, backed him into a corner, jamming him in the chest with a half-inch dowell stick, and threatened to "finish" him "if you ever take this to court." (R. 58.) Giroux testified as follows with respect to the assaults on Robinson (R. 125–126):

> He took a terrific beating. He took one of the worst beatings of all of them. The Chief wasn't satisfied and he just beat him and hit him, and the perspiration was just running off Mr. Williams, and he said, "Boy, this guy is about to wear me out." And every time he would go near, he would wallop him and sock him with this instrument. * * *

> And [Detective Ford] says one time to the Chief, "Take it easy. You will kill that guy." And the Chief says, "No he wants to be beaten." And he would walk in front of him and say, "You like me don't you?" And hit him, and he said, "Yes, sir, I do."
>
> Finally Robinson confessed. After the beating, I don't know whether the man knew what he was talking about or not. And everything they said, he would say, "Yes". It didn't make sense what he was saying.

Each "interrogation" lasted at least several hours (R. 32, 44; 56, 57, 58, 62; 82, 91; 103, 107), and in some cases after the beatings, petitioner handcuffed the victim and placed him in an automobile parked near the shack (R. 32–33, 80, 300), usually handcuffing the victim directly to the steering post of the automobile (R. 34, 54, 58, 88, 104, 124) and leaving him there for some time (R. 32, 33, 39), only to resume the inquisition thereafter (R. 33, 40, 80, 91). Each of the victims suffered painful physical injuries (R. 36, 37, 45, 46, 47, 48, 51, 85–87; 60, 66, 68, 70, 72, 73, 75, 76; 93, 97–98, 100, 101; 105, 118, 119), aside from the emotional effects of the experience (R. 46, 69, 97).

Following the incidents, petitioner and some of the others took three of the victims to the police station, where they were fingerprinted and briefly detained (R. 59, 83, 92, 105, 109). None was prosecuted.

SUMMARY OF ARGUMENT

I

Section 20 is not confined in its application to instances where persons acting under color of law willfully deprive others of their lives without due process of law, as was true in *Screws* v. *United States,* 325 U. S. 91. It is equally applicable to a case such as this where a special policeman, acting in his official capacity as a law-enforcement officer, willfully deprives persons of their liberty and bodily security, in violation of the rights secured to them by the Fourteenth Amendment, by arresting, detaining, and brutally beating them in order to obtain "confessions" from them. And, as so construed and applied, the statute provides an ascertainable standard of guilt.

II

Petitioner was a special police officer of the city of Miami, Florida, and as such misused the power vested in him by the state when he arrested and subjected the complaining witnesses to a "third degree" inquisition. The fact that he abused this power, while clothed with the authority of the state, does not mean that he did not act "under color of law", as that term in Section 20 has been construed in the *Classic* and *Screws* cases. It was a question of fact, for the jury to consider on the basis of all the evidence, whether petitioner acted for purely personal and private purposes,

or in his official capacity as a public law-enforcement officer seeking evidence that the complaining witnesses had committed the thefts. The jury were correctly instructed as to the meaning of this element of the offense, and the evidence amply supported their finding of petitioner's guilt.

ARGUMENT

I

PETITIONER'S ACTS CONSTITUTED A PLAIN VIOLATION OF SECTION 20, AND AS APPLIED TO SUCH ACTS THE STATUTE PROVIDED AN ASCERTAINABLE STANDARD OF GUILT

Petitioner's main contention seems to be that Section 20 of the Criminal Code—which in comprehensive terms makes it a federal offense for any person, acting under color of law, willfully to deprive another of any rights, privileges, or immunities secured to him by the Constitution and laws of the United States—does not apply to the acts of a municipal law enforcement officer who in his official capacity arrests a person suspected of crime and subjects him to the "third degree", involving lengthy continuous questioning punctuated by brutal physical assaults, in order to extract a "confession."

The conclusive answer to this contention is to be found in the rulings made by a majority of

this Court in *Screws* v. *United States,* 325 U. S. 91. So far as the applicability of Section 20 is concerned, this case differs from *Screws* only in the fact that here the victims did not die from the beatings. Petitioner's brief stresses that he committed only "simple assault and battery." But the brutal beatings and protracted interrogation to which his victims were subjected was far more than mere "assault and battery": it was trial and punishment by ordeal, in clear violation of the rights secured by the Fourteenth Amendment, and the victims were no less deprived of their constitutional rights because they survived the ordeal. Nothing in Section 20, or the cases construing it, supports the novel view that the only constitutional right protected is the right not to be deprived of life without due process by officials acting under color of law. On the contrary, the statutory protection extends to every federal right which "has been made specific by the express terms of the Constitution or laws of the United States or by decisions interpreting them." *Screws* v. *United States, supra,* p. 104 (opinion of Douglas, J.). And "it is plain that basic to the concept of due process of law in a criminal case is a trial—a trial in a court of law, not a 'trial by ordeal.' *Brown* v. *Mississippi,* 297 U. S. 278, 285." *Id.* p. 106.

Petitioner renews the contention rejected by six Justices of this Court in the *Screws* case[5] that Section 20 fails to provide an ascertainable standard of guilt as applied to rights secured by the Fourteenth Amendment. The *Screws* decision authoritatively establishes the validity of the statute as applied to Fourteenth Amendment rights which have been made specific and definite by judicial decisions. See 325 U. S. at pp. 103–105 (opinion of Douglas, J.); p. 131 (opinion of Rutledge, J.);[6] pp. 136–137 (opinion of Murphy, J.).

The constitutional rights involved in this case, as charged in the indictment (*supra,* p. 5) and

[5] Notwithstanding that a majority of the Justices could not agree on a single opinion, analysis of the positions taken by the members of the Court in the *Screws* case clearly shows that six Justices concurred in two holdings: (1) that official actions taken by law enforcement officers by virtue of authority possessed under state law do not lose their character as actions "under color of any law" because they constitute an abuse and violation of such authority; (2) that Section 20 is to be construed as protecting every right which has been made definite by decision or other provision of law, and as so construed is not unconstitutionally vague. The case was remanded for a new trial because four Justices, whom Mr. Justice Rutledge joined only in order to avoid a stalemate, believed that the jury had not been properly instructed as to the intent required under the statute. See Brief for the United States in No. 26, pp. 23–28.

[6] Mr. Justice Rutledge stated that "there is a body of well-established, clear-cut fundamental rights, including many secured by the Fourteenth Amendment, to all of which the sections [Sections 19 and 20 of the Criminal Code] may and do apply, without specific enumeration and without creating hazards of uncertainty for conduct or defense."

as stated by the trial court in its instructions to the jury (R. 314–315, 316–317), are as follows: (1) the right not to be deprived of liberty without due process of law; (2) the right to be secure in one's person while in the custody of the state; (3) the right not to be punished without due process of law; (4) the right to be immune, while in the custody of persons acting under color of the laws of the state, from illegal assault and battery by any person exercising the authority of the state; and (5) the right to be tried by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the state. The court instructed the jury that each of these rights is protected by the Fourteenth Amendment and is within the protection of Section 20 (R. 317).

It is clear that these rights have been made specific and definite by judicial decisions. The constitutional rights here involved are substantially the same as those in the *Screws* case except, as already noted, that the victims in this case were not deprived of their lives. See 325 U. S. 91, 93. The opinion of Mr. Justice Douglas clearly holds that these rights are sufficiently specific and definite to provide an ascertainable standard of guilt for those who act with intent to violate such rights (p. 106). And on this point Mr. Justice Rutledge (p. 131) and Mr. Justice Murphy (pp. 136–137) concurred. See also

Chambers v. *Florida*, 309 U. S. 227, 236–237, 240; *Brown* v. *Mississippi*, 297 U. S. 278; *Powell* v. *Alabama*, 287 U. S. 45; *Moore* v. *Dempsey*, 261 U. S. 86; *Meyer* v. *Nebraska*, 262 U. S. 390, 399; *Civil Rights Cases*, 109 U. S. 3, 23–24; *Hurtado* v. *California*, 110 U. S. 516; *Holden* v. *Hardy*, 169 U. S. 366; *Bute* v. *Illinois*, 333 U. S. 640; *Strauder* v. *West Virginia*, 100 U. S. 303, 310; *Watts* v. *Indiana*, 338 U. S. 49, 55; *Turner* v. *Pennsylvania*, 338 U. S. 62; *Harris* v. *South Carolina*, 338 U. S. 68; and *Johnson* v. *Pennsylvania*, 340 U. S. 881. The Fourteenth Amendment rights involved in this case were also involved in the following cases, and were held sufficiently definite: *Catlette* v. *United States* 132 F. 2d 902 (C. A. 4); *Culp* v. *United States*, 131 F. 2d 93 (C. A. 8); *Crews* v. *United States*, 160 F. 2d 746 (C. A. 5); *United States* v. *Frierweiler*, 52 F. Supp. 4 (E. D. Ill.); *United States* v. *Sutherland*, 37 F. Supp. 344 (N. D. Ga.).

It should be noted that petitioner's brief (p. 6) concedes that the trial court "followed the direction of this Court in the *Screws* case by charging the jury in conformity with that case that the defendant must have a conscious purpose to willfully deprive a person, the complaining witnesses, or either [any] of them, of a specific constitutional right." The court instructed the jury that "the word 'willfully' appearing in this statute, has a meaning and a very distinct and

definite meaning that you should consider" (R. 322); and that (R. 322–323):

> * * * It is not sufficient that the defendants here had generally a bad purpose in doing the things they are alleged to have done, or that they went too far because of an excess of zeal in their desire to obtain a confession from these men. In order to convict under these counts—Two, Four, Six and Eight—it is necessary for the jury to find that the defendants had in mind the specific purpose of depriving these men of one or more of the Constitutional rights I have previously enumerated to you. I don't mean by that, gentlemen, that in order for you to convict these defendants or any of them, that you must believe that they were saying over and over to themselves, "These men are protected by the Fourteenth Amendment to the Constitution of the United States, which is implemented by Acts 51 and 52 of the Title 18, United States Code Annotated." I don't mean that at all, and you know I don't, but I mean that they must, in order for you to determine that they acted willfully, that they had generally in mind that these men had rights guaranteed to them by the basic laws of this country, and they were knowingly depriving them of these rights.
>
> The law denies to anyone acting under color of law, statute ordinance, regulation or custom the right to try a person by ordeal; that is, for the officer himself to inflict such punishment upon the person as

> he thinks the person should receive. Now in determining whether this requisite of willful intent was present in this case as to these counts, you gentlemen are entitled to consider all the attendant circumstances; the malice, if any, of the defendants toward these men; the weapon used in the assault, if any; and the character and duration of the investigation, if any, of the assault, if any, and the time and manner in which it was carried out. All these facts and circumstances may be taken into consideration from the evidence that has been submitted for the purpose of determining whether the acts of the defendants were willful and for the deliberate and willful purpose of depriving these men of their Constitutional rights to be tried by a jury just like everyone else.'

In view of these instructions, it is clear that the trial court properly charged the jury as to the "specific intent" required under the construction given Section 20 in the *Screws* case.

II

THE EVIDENCE AMPLY JUSTIFIED THE JURY'S FINDING, IMPLICIT IN THE VERDICT, THAT PETITIONER ACTED UNDER COLOR OF LAW.

Petitioner contends that Section 20 does not apply to deprivations of constitutional rights

[7] The court repeated to the jury at R. 324 and 327 that, in order to convict, they must find that the defendants specifically intended to deprive the complaining witnesses of the constitutional rights enumerated in the indictment.

"by state or municipal officers holding the merest shadow of authority" where such acts are in violation of the laws of the state (Br., p. 7). He makes no claim that the acts for which he was convicted were of a personal nature, and that in committing these acts, he was acting entirely as a private individual.

1. The opinion of Mr. Justice Douglas in the *Screws* case recognized that "acts of officers in the ambit of their personal pursuits are plainly excluded" from Section 20 (325 U. S. at 111).[8] In accordance with this construction of the statute, the trial court here expressly charged the jury that the statute "was not intended to cover and does not cover personal and individual acts of a citizen in wrongfully depriving another citizen of the Constitutional rights guaranteed to him by the Fourteenth Amendment"; that it "was not designed to reach, and does not reach the personal individual acts of one person towards another, when the act is not done under color of State law, even though the person com-

[8] In *United States* v. *Waddell*, 112 U. S. 76, 80, the Court, referring to Section 19, said: "The right here guaranteed is not the mere right of protection against personal violence. This, if the result of an ordinary quarrel or malice, would be cognizable under the laws of the State and by its courts." It is also a good defense under Section 20 that the alleged denial of constitutional rights was not "willful" because it resulted from an honest error of judgment made in good faith and with a purpose "unrelated to the disregard of any constitutional guarantee." *Screws*, p. 97 (Douglas, J.) and pp. 129–131 (Rutledge, J.).

mitting the act is the holder of a public office"; that it "is important that you keep clearly in mind the legal distinction which I have just pointed out to you between the personal and individual acts of a citizen holding a public office and the illegal misuse of power possessed by virtue of his office"; that Section 20 does not apply to a person who acts "of his own personal volition for his own personal reasons"; and that it "was not designed to reach private personal controversies between two people" and hence if the jury finds that the defendants were acting "solely in their individual capacities, because of personal animosity towards these men, then what they did constitutes only a violation of the State law which should be remedied in the State courts of Florida and is not a violation of any Federal law" (R. 319–321).

The court's further instructions on the necessity for finding that the defendants acted "under color of law," in order to convict them, were explicit and detailed (R. 319–321):

> The statute [Section 20] applies only to one who acts under guise of color or authority of state law and thus brings about the illegal deprivation of Constitutional rights * * * it is the law that any misuse of power possessed by virtue of State law, made possible only because the wrongdoer is clothed with authority of State law, is action taken under color of State law. * * *

This brings us to the question of whether or not Purnell, Robinson, Priest and Sturniolo were taken into custody by the defendants and held by virtue of the authority vested in them as officers of the law. An officer of the law does not have the power to divest himself of his official authority in actions taken by him which on their face appear to be actions taken pursuant to his authority, but his official position does not deprive him of the right to act as an individual in personal altercations with others. * * * you must take into consideration the circumstances under which it is charged the defendants took these men into their custody and determine whether or not in so doing, and in doing what they did, the action taken by them was taken "under color of State law."

If you find from the evidence in this case that the defendants took these men into their custody under color of law by reason of the positions they, or some of them, held, then the court charges you that these men had the right to be tried upon any charges for which he had been arrested, in a regularly constituted court of justice having jurisdiction, and if found guilty, subjected to the usual pains and penalties applicable to all persons alike for the offense charged. The defendants had the right to question them, but of course they had no right to coerce, misuse or beat them in the effort to extort a confession from them.

The essential issue on this question is this. As I have previously indicated, the Federal Statute under which the defendants are here on trial under counts Two, Four, Six and Eight, has no application to a citizen who acts without color of law: that is, of his own personal volition for his own personal reasons. The act upon which these counts are based, applies only when and only to one who acts under the guise or pretense of authority of law. This statute was not designed to reach private personal controversies between two people. So under these counts, if you find from the evidence that the defendants were not acting under color of law, but solely in their individual capacities, because of personal animosity toward these men, then what they did constitute only a violation of the State law, which should be remedied in the State courts of Florida and is not a violation of any Federal law. But, as I said before, if these men were taken into custody by the defendants, or either of them, and held by defendants, under color of law, by reason of the positions held by the defendants, or some of them, then the ordeal to which the defendants are alleged to have subjected these men, if they did so subject them, constituted a violation of the Federal statute.

Your attention is further specifically called to the language of the statute upon

> which these counts are based, which provides that "whoever, under color of law," etc., does the act prohibited, shall be guilty of the offense defined in the statute. Now color of law means a mere semblance of legal right. So, color of law, as used in the statutes, does not necessarily mean the exercise of some specific legal authority vested in an officer of the law, but also semblance, appearance and pretense and implies, in the language of the statute, that the act to which it applies need not necessarily have the real characteristics of a legal act. Therefore, we do not have in this case any question as to whether the defendants, in taking these men into custody and holding them in custody, acted under authority of any law of Florida, but whether or not the taking of these men into custody was done under color of law of Florida, state, county or municipal, arising out of the official positions held by the defendants, or some of them.

These instructions correctly applied the interpretation given "under color of law", as used in Section 20, in *United States* v. *Classic,* 313 U. S. 299, 326, and in the *Screws* case, 325 U. S. 91. Mr. Justice Stone's opinion for the Court in the *Classic* case stated (p. 326):

> Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority

of state law, is action taken "under color of" state law.[8]

The meaning which the *Classic* case gave to the phrase "under color of law" was expressly approved in the opinions of Mr. Justice Douglas (pp. 107–113) and Mr. Justice Rutledge (pp. 114–117), and impliedly in the opinion of Mr. Justice Murphy (pp. 134–138) in the *Screws* case. This definition has also been followed by the lower federal courts: *Crews* v. *United States,* 160 F. 2d 746, 750 (C. A. 5); *Catlette* v. *United States,* 132 F. 2d 902, 905–906 (C. A. 4); *Culp* v. *United States,* 131 F. 2d 93, 98 (C. A. 8); *United States* v.

[8] As early as 1879, only 11 years after adoption of the Fourteenth Amendment, this Court held in *Ex parte Virginia,* 100 U. S. 339, 346–347:

> * * * The prohibitions of the Fourteenth Amendment are directed to the States * * *. It is these which Congress is empowered to enforce, and to enforce against State action, however put forth, whether that action be executive, legislative, or judicial. * * *
>
> * * * Whoever, by virtue of public position under a State government, deprives another of property, life, or liberty, without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning.

Ex parte Virginia does not stand alone; it is merely the first in a long series of cases holding that action by state officers exercising powers which they are authorized to exercise under state law does not lose its character as state action merely because such officers exceed their authority. See cases cited by Mr. Justice Rutledge in his opinion in the *Screws* case, 325 U. S. 91, 115, note 6.

Trierweiler, 52 F. Supp. 4, 6 (E. D. Ill.); *United States* v. *Sutherland,* 37 F. Supp. 344, 346 (N. D. Ga.).

2. In view of the instructions, the jury's verdict of guilt constitutes a finding that petitioner acted "under color of law," as that term is defined in the *Classic* and *Screws* cases. There remains the question whether the evidence was sufficient to permit the jury to make such a finding. This Court has held that the concurrence of both lower courts in the sufficiency of the jury's verdict will ordinarily preclude reexamination of the evidence. *United States* v. *Johnson,* 319 U. S. 503, 518; *Delaney* v. *United States,* 263 U. S. 586, 589–590. In any event, the evidence here amply warranted the jury in concluding that petitioner acted "under color of law." He was a special police officer of the City of Miami, having been designated as such by the Director of Public Safety of the city under the authority of an express provision of the city charter (R. 144–147, 150–152, 154–156, 158–159, 212).[10] This provision states that the authority of

[10] Section 24 (a) of the Charter of the City of Miami provides in pertinent part:

> No person, except as otherwise provided by general law or this charter, shall act as special police or special detective except upon written authority from the director of public safety. Such authority, when conferred, shall be exercised only under the direction and control of the chief of police and for a time specified in the appointment.
>
> The members of the police force of said city shall be

special police officers "shall be exercised only under the direction and control of the chief of police", and it was testified by an official of the Miami Police Department that special police officer cards, such as that held by Williams, are issued "to facilitate the work of private patrolmen and private detectives, who, although operating or participating in private business, are considered a service to the City of Miami" (R. 155).

There is no reason to believe that the status and powers of special police officers in Miami, Florida, differ from those which prevail generally. As this Court said in *Labor Board* v. *Jones & Laughlin Co.*, 331 U. S. 416, 429, 431: "It is a common practice in this country for private watchmen or guards to be vested with the powers of policemen, sheriffs or peace officers to protect the private property of their private employers. And when they are performing their police functions, they are acting as

invested with all the power and authority necessary for enforcing the ordinances of said city.

The chief of police or any policeman of the City of Miami, may arrest without warrant, any person violating any of the ordinances of the city committed in the presence of such officer, and when knowledge of the violation of any ordinance of said city shall come to the said chief of police or policeman, not committed in his presence, he shall make affidavit before the judge or clerk of municipal court against the person charged with such violation, whereupon, said judge or clerk shall issue a warrant for the arrest of such person. (Code of City of Miami, Florida, Michie ed., 1945, pp. 44–45.)

public officers and assume all the powers and liabilities attached thereto. * * * In other words, special policemen are public officers when performing their public duties." In support of this proposition the Court cited the following cases: *Thornton* v. *Missouri Pacific Ry. Co.*, 42 Mo. App. 58; *Dempsey* v. *New York Central & Hudson River R. Co.*, 146 N. Y. 290, 40 N. E. 867; *McKain* v. *Baltimore & Ohio R. Co.*, 65 W. Va. 233, 64 S. E. 18; *Neallus* v. *Hutchinson Amusement Co.*, 126 Me. 469, 139 A. 671; *New York, Chicago & St. Louis Ry. Co.* v. *Fieback*, 87 Ohio St. 254, 100 N. E. 889; *Pennsylvania R. Co.* v. *Deal*, 116 Ohio St. 408, 156 N. E. 502. See also *Kirkpatrick* v. *Alan Wood Steel Co.*, 338 Pa. 126, 12 A. 2d 22."

Under Florida law every "peace officer" is given broad powers of arrest not available to private individuals. Fla. Stat., § 901.15 (as

[11] In upholding the constitutionality of municipal ordinances subjecting the business of private detectives to police supervision, this Court pointed out that such ordinances "provide in effect that all who engage in it [police activity] or are connected with it as a business shall have the sanction of the State, have the stamp of the State as to fitness and character, take an oath to the State for faithful execution of its duties and give a bond for their sanction." *Lehon* v. *City of Atlanta*, 242 U. S. 53, 55. In the instant case Williams took an oath of office upon entering upon his duties as a special police officer (R. 149–151), and he testified that, before being issued a special police card, "I was investigated by the State of Florida, and had to stand a lengthy investigation of my past" (R. 224). The record does not indicate whether he had to furnish a bond.

amended, Laws of 1943, c. 21782).[12] The Supreme Court of Florida has held that these powers extend to "sheriffs, police officers, and other executive officers in this state." *Osborne* v. *Florida*, 87 Fla. 418, 419. In construing a similar statute, the Supreme Court of Tennessee stated that "'peace officer' is an exceedingly comprehensive term, embracing public officials of practically every class and position * * *." *Vickers* v. *State*, 176 Tenn. 415, 419, 142 S. W. 2d 188, 189. See also *Williams* v. *Commonwealth*, 142 Va. 667,

[12] This statute provides:

A peace officer may without warrant arrest a person:

(1) When the person to be arrested has committed a felony or misdemeanor or violation of a municipal ordinance in his presence. In the case of such arrest for a misdemeanor or violation of a municipal ordinance, the arrest shall be made immediately or on fresh pursuit.

(2) When a felony has in fact been committed, and he has reasonable ground to believe that the person to be arrested has committed it.

(3) When he has reasonable ground to believe that a felony has been or is being committed and reasonable ground to believe that the person to be arrested has committed or is committing it.

(4) When a warrant has been issued charging any criminal offense and has been placed in the hands of any peace officer for execution.

Although the Florida statutes make no provision for arrests by private persons, it has been held that the latter have the common-law right to make arrests only for felonies committed in their presence. *Dorsey* v. *United States*, 174 F. 2d 769 (C. A. 5). Cf. Fla. Stats. §§ 354.01 and 354.02, which provide for the appointment by the Governor of special officers for railroads and other common carriers, and empower such officers to make arrests, carry weapons, etc.

128 S. E. 572, 573, holding that special policemen are "peace officers" within a Virginia statute. And the provisions of the Miami city charter quoted above (footnote 10) indicate that special police officers, in exercising their duties as such, have the same powers as regular city policemen.

We believe it clear that petitioner, as a special police officer of the City, was "clothed with the authority of state law." But even if there should be any doubts as to the extent of the authority which his status as a special police officer gave him, the record clearly shows that petitioner's acts in this case were incident to an *official* investigation instituted and conducted under the aegis of the state.[13] It was not disputed that Ford,

[13] It is clear that actions of individuals or organizations which exercise a public or governmental function or which have a sufficient nexus with the State are subject to the prohibitions of the Fourteenth Amendment. *Marsh* v. *Alabama*, 326 U. S. 501; *Smith* v. *Allwright*, 321 U. S. 649; *Kerr* v. *Enoch Pratt Free Library*, 149 F. 2d 212 (C. A. 4); cf. *Steele* v. *Louisville & N. R. R.*, 323 U. S. 192; and see Note, 61 Harv. L. Rev. 344. In *Nixon* v. *Condon*, 286 U. S. 73, 89, the Court said: "The test is not whether [such individuals or organizations] are the representatives of the State in the strict sense in which an agent is the representative of the principal. The test is whether they are to be classified as representatives of the State to such an extent and in such a sense that the great restraints of the Constitution set limits to their action." The Court there held that the executive committee of a political party were invested with governmental authority under state law and had "become to that extent the organs of the State itself, the repositories of official power", because they were "acting in matters of high public interest, matters intimately connected with the capacity of government to exercise its functions unbrokenly and smoothly." *Id.*, p. 88.

a regular policeman of the city, was detailed by a superior police officer to assist Williams in the investigation of the alleged thefts, and, as the court below pointed out (R. 350), throughout the entire interrogations and assaults, Ford "was present in an official capacity as a policeman of the City of Miami, acting under the authority of the City, and giving, under our holding in *Crews* v. *United States, supra,* official color to the investigation."

The Chief of Detectives of the Miami Police Department testified that he assigned Ford to the investigation "at the request of Mr. Williams, who stated to me that he had uncovered some irregularities at the Lindsley Lumber Company, and it was conceivable that an arrest might have to be made" (R. 186), and that he had also received a call that same day from the Assistant Solicitor of Dade County who "stated that certain information had been laid before him and it was not completed; that it required some additional investigation, and it was the province of the police department to conduct such investigations to assemble the case to a point where it would be suitable for possible prosecution. And it was with that thought in mind that I cooperated with the County Solicitor's office [by assigning Ford to the investigation]" (R. 187).

The record is replete with evidence that petitioner performed the acts for which he was convicted, not as a private individual but as a

public law enforcement officer."[14] He testified that he "considered the investigation to be too large for me to handle by myself, and I went to the Dade County Solicitor's office in the courthouse, and I requested some assistance in that office" (R. 212). He identified himself to Mrs. Priest, wife of one of the victims, as a "detective" (R. 216), flashing a badge (R. 96). Ford, in the presence of petitioner, told Purnell, another victim, that "they were working out of the Capitol" (R. 42). Robinson, throughout his interrogation, believed that the defendants, including petitioner, were "city detectives" and later informed the doctor who examined him that "I was beaten by city detectives" (R. 64). Petitioner told Priest, "Did you know that I am going to take you to Raiford [the state penitentiary]?" (R. 83). After his interrogation was completed, Priest was taken to the police station. According to the official records of the Miami Police Department introduced at the trial, he was "arrested by J. Williams and J. Avery" (R. 180). Sturniolo testified that he was apprehended by Ford and Williams in the following manner (R. 103): "They came right up to my house in the car. And he [Williams] came up and told me he was going to arrest me for grand larceny. I opened

[14] As to Purnell: R. 30–34, 37, 54–55, 129; as to Robinson: R. 54–56, 58–59, 62, 64–65, 181–182, 219, 229; as to Priest: R. 78, 80–81, 83, 90, 96, 180, 216, 234; and as to Sturniolo: R. 58–59, 102–103, 105, 123, 129, 218, 234, 294–295.

the door and asked them what it was all about, and he put handcuffs on me and started dragging me off."

All these circumstances combined to justify the jury in concluding that petitioner acted here in an official capacity, exercising the usual powers incident to a police investigation of crime. Conceivably, he could have been acting solely and entirely as a private individual, for purely private purposes. But it is clearly a question of fact whether, in conducting the investigation and committing the acts incident thereto, he was acting in a private capacity or in his public capacity as a police officer bent on enforcing the criminal law. Such a question is for the jury (see *Neallus* v. *Hutchinson Amusement Co.*, 126 Me. 469, 139 Atl. 671; *Sharp* v. *Erie R. Co.*, 184 N. Y. 100, 76 N. E. 923; *Rucker* v. *Barker*, 108 Tex. 280, 192 S. W. 528; *Ruffner* v. *Jamison Coal & Coke Co.*, 247 Pa. 34, 92 Atl. 1075; and cases cited in 55 A. L. R. 1205), and petitioner cannot complain because it was resolved against him by the jury in this case.

CONCLUSION

The Court of Appeals stated (R. 344) that: "This case is another instance where in applying the third degree in an endeavor to unearth a crime a more reprehensible crime was thereby committed." Petitioner was properly convicted of violation of Section 20, and the proof abund-

antly supports the verdict. The judgment below should be affirmed.

Respectfully submitted.

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